

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, IN

UNITED RENTALS, INC.
Employer

and

Case 25-UC-231

INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 103, AFL-CIO
Petitioner-Union

and

Case 25-UD-248

LANNIE RAY O'NEAL¹
Petitioner

DECISION AND ORDER DISMISSING CASE 25-UC-231
AND DIRECTING AN ELECTION IN CASE 25-UD-248

Upon a petition duly filed in Case 25-UC-231 under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on April 20, 2005, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine if unit clarification is appropriate.² A petition having been filed in Case 25-UD-248, this case was

¹ The names of the Employer, Petitioner-Union and Petitioner appear as stipulated by the parties.

² Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved represents certain employees of the Employer and claims to represent certain other employees.
- d. No question affecting commerce exists concerning the representation of these other employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

consolidated with Case 25-UC-231 since a determination in Case 25-UC-231 would affect the number of employees potentially eligible to vote in the election in Case 25-UD-248.

I. ISSUE

The Petitioner in Case 25-UC-231, International Union of Operating Engineers Local 103, AFL-CIO (herein referred to as the Union) seeks to clarify the existing bargaining unit to include all transport drivers, all delivery drivers, all yard persons, all shop mechanics and all field mechanics employed by United Rentals, Inc. (herein referred to as the Employer) at its facility located in Lafayette, Indiana. The Union currently represents two field mechanics and one driver who work in the Employer's general rental equipment division.³ By the instant petition the Union seeks to include one field mechanic and one driver who work in the Employer's aerial division at the Lafayette facility into the existing unit on grounds that the aerial division employees have been effectively integrated and merged into the unit.

The Employer, however, contends that there have not been recent changes in circumstances to warrant the accretion of the aerial division employees to the bargaining unit.

The Petitioner in Case 25-UD-248, Lannie Ray O'Neal (herein referred to as the Petitioner), seeks an election among the employees in the bargaining unit in order to ascertain their desire regarding whether to rescind the union-security provision of the parties' current collective bargaining agreement. A decision concerning the Union's petition to clarify the unit will determine which employees are eligible to vote in the deauthorization election.

II. DECISION

For the reasons discussed in detail below, including the fact that there is insufficient evidence to establish that the aerial division positions have undergone recent and substantial changes in their duties and functions, it is concluded that the field mechanic and the driver employed by the Employer in its aerial division at its Lafayette facility do not constitute an accretion to the bargaining unit represented by the Union. Accordingly, the Union's unit clarification petition is dismissed. In addition, an order and direction of election is issued concerning the deauthorization petition.

Consistent with the certification issued in Case 25-RC-10144 and the language of the parties' contract, the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees of the Employer at
its General Rental Equipment Building, Lafayette, IN location,

³ The record indicates that there are currently two truck drivers, one in the aerial division and one in the general rental equipment division. However, the record does not use the title transport driver or delivery driver when referring to the truck drivers. Hereinafter, the title of driver will be used.

including all transport drivers, all delivery drivers, all yard persons, all shop mechanics and all field mechanics: excluding all United Rentals Inc. Aerial Division employees, all sales employees, all office clerical employees, and all guards and supervisors as defined in the Act.

The unit found appropriate herein consists of approximately three (3) employees.

III. STATEMENT OF FACTS

A. Overview of Operations

The Employer has operated its Lafayette, Indiana facility since 1997, and is engaged in the rental and sale of construction related equipment. The Employer maintains a general rental equipment division and an aerial equipment division at this facility.⁴ The general rental equipment division leases equipment primarily to residential customers, while the aerial equipment division leases equipment primarily to commercial clients. The aerial division operates Monday through Friday while the general rental equipment division is also open on Saturdays. There are two separate buildings at the Lafayette facility, one located behind the other. The front building is known as the general rental equipment building in which the Employer leases, sells, maintains and repairs equipment such as lawn mowers, leaf blowers, fans, compressors, excavators, and bobcats. Equipment is housed in the front and rear portion of this building. The second building is slightly larger and it is known as the aerial equipment division building where the Employer sells, leases, maintains and repairs equipment such as scissor lifts, boom lifts, and articulating lifts. The aerial building has a sign on its exterior that reads "United Rentals, Aerial Equipment." The two buildings are approximately twenty-five feet apart. The aerial equipment is stored in the back of the aerial building. Equipment is serviced and repaired in both buildings in order to prepare it for lease or sale.

Currently, the employees employed in the general rental equipment division are represented by the Union in the above bargaining unit. The Union was certified by the Board as the collective-bargaining representative of these employees on November 5, 2002. Thereinafter, the parties entered into a collective bargaining agreement effective by its terms from October 1, 2003 until September 30, 2006. The description of the unit is the same as described above.

The unit is currently comprised of two field mechanics and one driver who work in the general rental equipment division. By the instant petition the Union seeks to add to the unit one

⁴ The record reflects that the Employer has two other operating divisions that do not exist at the Lafayette location.

field mechanic and one driver who work in the aerial division building.⁵ It appears that no history of collective bargaining exists in regard to aerial division employees.

The highest ranking official at the Employer's Lafayette facility is the Branch Manager. Reporting to the Branch Manager is a Shop Supervisor⁶ who oversees all field mechanical work. Until January 1, 2005, the employees who worked in the aerial division building were supervised by another supervisor whose title is not reflected in the record. Since January 1,⁷ the field mechanic in the aerial division has been supervised by the Shop Supervisor. The Shop Supervisor has worked out of an office in the aerial division building since sometime after January 1. Previously, his office had been located in the general rental equipment building. The Employer also has a sales office in the general rental equipment building. The sales office includes sales counter employees who assist customers visiting the facility and take telephone calls from customers of both divisions. The sales office also includes outside sales personnel who are responsible to make sales related visits to customers of both divisions. Also reporting to the Branch Manager is the Assistant Branch Manager whose office is located in the general rental equipment building. One of the responsibilities of the Assistant Branch Manager is dispatching. The Assistant Branch Manager supervises both the driver of the aerial division and the driver of the general rental division.

It appears from the record that the labor relations function is centralized and is overseen by a corporate Director of Labor Relations. This Director is responsible for the labor relations function in the general rental equipment division, the aerial division, and other divisions that the Employer has nationally. The payroll function is also centralized. The employees in the bargaining unit enjoy benefits that have been outlined in the collective bargaining agreement, which include six holidays, three sick days, and three weeks of vacation after 10 years of employment. The aerial division employees have nine holidays, six sick days, and three weeks of vacation after 5 years of service. It appears from the record that all employees have the same health insurance benefits. It also appears that the aerial division employees are paid at a higher hourly wage rate than unit employees although the record fails to indicate wage rates specifically. Bargaining unit employees are paid on a weekly basis and aerial division employees are paid biweekly. There is one lunchroom located in the general rental equipment building available to all employees. Each general rental equipment mechanic works from 7:00 A.M. to 5:30 P.M. from Monday through Friday, and on alternate Saturdays. The aerial equipment mechanic does not work on Saturday. The drivers of both divisions work from 7:00 A.M. to 5:30 P.M. from Monday through Friday with no Saturday work. The general rental equipment employees wear a uniform that consists of a white and blue shirt while the aerial division employees wear a light blue shirt. The record does not reflect whether a performance

⁵ The parties agreed at hearing that a temporary employee currently working as a yard person and a contractor currently working at the facility are not proper subjects for accretion.

⁶ The parties stipulated that the Shop Supervisor is a supervisor within the meaning of Section 2(11) of the Act.

⁷ All dates hereinafter refer to 2005 unless otherwise indicated.

evaluation process exists at this facility. The drivers and field mechanics in both divisions are provided with Nextel two-way radios in order to communicate with the Employer. According to the record, the work schedules, benefits, uniforms, and other working conditions described herein have not changed since the collective bargaining agreement became effective.

B. General Rental Equipment and Aerial Equipment Employees

Prior to January 1, aerial division employees were supervised by a supervisor whose exact title is not indicated in the record. It appears that this aerial division supervisor did not report to the Branch Manager of the Lafayette facility but instead reported to an Aerial Branch Manager located at another facility in Indianapolis. Thus, prior to January 1, the Lafayette Branch Manager did not oversee the aerial division's operation. Approximately January 1, the Lafayette aerial division supervisor was transferred to another location and ceased supervising the aerial division employees at Lafayette. About the same time the Branch Manager held a meeting of all employees and informed them that the aerial division and the general rental equipment division were merging. Since January 1, the aerial division mechanic and the mechanics employed at the general rental division have been supervised by the same Shop Supervisor. The aerial division driver has been supervised by the Assistant Branch Manager who also supervises the general rental driver. Also since about January 1, the Employer reduced the number of time clocks from two time clocks, one in each building, to one time clock located in the general rental equipment building. It appears that now all employees use the time clock in the general rental equipment building to register their work hours.

The drivers are responsible for delivering and picking up equipment leased to customers. Currently, there are two drivers who operate almost identical semi-trucks and transport both general rental equipment and aerial equipment on an as-needed basis. As previously mentioned, since January 1, both drivers have been supervised by the Assistant Branch Manager. It appears from the record that before January 1, the aerial driver delivered aerial equipment almost exclusively, only occasionally delivering or picking up general rental equipment. However, the record does not reflect the exact frequency with which this occurred. The record fails to describe how much contact or interaction, if any, the drivers experience on a daily basis, or whether this contact/interaction has increased, decreased, or remained the same since the merger of the two divisions at the Lafayette facility.

The field mechanics are responsible for providing service and repairs to leased equipment. This mechanical work is performed at the Employer's facility and in the field at customers' locations. The field mechanics in the general rental equipment division work most of the day in the general rental equipment building. The record indicates that these mechanics spend approximately 60% of their time performing maintenance work and 40% of their time repairing equipment. The aerial division mechanic spends most of his day working in the aerial division building and spends approximately 50% of his time performing maintenance work and 50% of his time performing repair work. The general rental equipment field mechanic testified that he repairs aerial equipment an average of once a month, while the other rental mechanic repairs aerial equipment only about twice a year. Similarly, the aerial mechanic seldom performs work on general rental equipment. The record indicates that since January 1, the aerial mechanic has performed repair work on general rental equipment only twice, and this occurred in the field.

Through the years, the aerial division field mechanic has received specialized off-site training from the four major manufacturers of aerial equipment. The general rental equipment mechanics have not received this off-site training. The general rental equipment mechanics may interact with the aerial mechanic for about one-half an hour a day, and with the drivers about two hours a day. The record, however, does not reflect if this interaction has changed or remained the same since January 1. It appears that the aerial division mechanic is away from the facility making field calls more frequently than the general rental equipment field mechanics. The aerial division mechanic is provided a service van by the Employer that he is allowed to take home. The general rental equipment mechanics are not provided company vehicles, however.

C. History of Collective Bargaining

Although the record is not entirely clear, it appears that in late summer or early fall of 2002, the Union filed its petition in Case 25-RC-10144 seeking to represent all employees in the Employer's facility, which included both the general rental equipment and aerial equipment division employees. The Union amended this petition on September 27, 2002, to seek an election among only general rental equipment division employees, and excluding aerial division employees. According to the Employer's Director of Labor Relations, the Union attempted to include aerial division employees in the unit during negotiations of the parties' current collective bargaining agreement. However, at hearing the Union's business representative and chief negotiator for the Union denied that the Union proposed to include aerial division employees in the unit during negotiations. The record indicates that the Employer has about fifty collective bargaining agreements with the Union nationally, and that none of these agreements has a unit with both general rental equipment division employees and aerial division employees in it. However, the Lafayette facility is the only location where the Employer maintains both a general rental equipment division and an aerial division.

IV. DISCUSSION

Unit clarification is appropriate for resolving ambiguities concerning the unit placement of individuals who occupy a newly created job classification whose unit placement is disputed, or of individuals who occupy an existing classification which has undergone recent, substantial changes in duties and responsibilities such that a doubt exists as to whether the individuals in such classification continue to fall within the category – included or excluded – which they occupied in the past. Clarification is not appropriate, however, for upsetting an established history of parties concerning the unit placement of classifications, Bethlehem Steel Corporation, 329 NLRB 243 (1999), citing Union Electric Co., 217 NLRB 666, 667 (1975). Thus, where a position or classification has historically been excluded from a bargaining unit, and where there have not been recent and substantial changes that would call into question the unit placement of the classification, the Board generally will not entertain a petition to clarify the status of the position, regardless of when in the parties' bargaining cycle the unit clarification petition is filed, Bethlehem Steel Corporation, *Supra*; Plough, Inc., 203 NLRB 818, 819, n. 4 (1973).

An accretion is the addition of a relatively small group of employees to an existing unit, where the additional employees share a community of interest with unit members and lack a

separate identity, Safeway Stores, 276 NLRB 944, 948 (1985). In assessing accretion issues, the Board considers various factors, including the extent of employee interchange, common supervision, centralized control of labor relations, centralization of administrative control, the degree of operational integration, the geographic proximity of work sites, the similarity of employee skills, functions, and working conditions, collective bargaining history, and the number of employees to be accreted in comparison to the size of the existing unit. In any given case, a number of factors may favor or disfavor accretion, and the Board must balance the right of employees to select a bargaining agent against the concomitant statutory objective of maintaining stable labor relations. The two most important factors for consideration are employee interchange and common day-to-day supervision, Towne Ford Sales, 270 NLRB 311 (1984). Further, the Board has stated that the doctrine of accretion will not be used where the employees sought to be included in an established bargaining unit may constitute a separate appropriate unit, Passavant Retirement and Health Center, Inc., 313 NLRB 215 (1994).

In the case at hand, the positions of driver and field mechanic in the Employer's aerial division have existed since at least September 2002. These positions were specifically excluded from the bargaining unit the Union sought to represent in its petition to the Board in 2002; were excluded from the Board certification of representative; and were excluded from the bargaining unit description in the collective bargaining agreement. In order for the Board to clarify the existing unit to now include these positions, the evidence must show that the duties and responsibilities performed by these positions have undergone recent and substantial changes such that the classifications now share a sufficient community of interest with unit members to require their joinder in the unit. The Union asserts that since January 1, the Employer's operations have experienced several changes that have effectively integrated the general rental equipment division and the aerial equipment division. The Union asserts that the elimination of the time clock in the aerial equipment building; common supervision now shared by employees in both divisions; and the change in mechanics' and truck drivers' duties, have created a community of interest between the two groups of employees which warrant the addition of the aerial employees to the existing unit.

In respect to the time clock, the record indicates that since January 1, the Employer has eliminated the time clock in the aerial division building, and employees who work in both divisions now record their work time with the time clock located in the general rental equipment building. The record fails to reflect, however, what if any impact this change has had upon the working conditions of the two groups of employees. For example, the record does not indicate whether the time clock change has resulted in greater daily contact between the employees, and if so, the extent of such contact. In addition, testimonial evidence indicates that the Employer's payroll processing and the employees' pay cycles have remained unchanged. Hence, the aerial division employees continue to be paid on a biweekly basis while the general rental equipment division employees continue to be paid on a weekly basis. Thus, evidence concerning the time clock change is insufficient to establish that it has had any substantial impact upon the creation of a community of interest between the aerial and general rental employees.

The evidence concerning the change in the aerial division employees' supervision indicates that after January 1 the aerial field mechanic has been supervised by the same Shop Supervisor who supervises the two field mechanics in the general rental division. The driver in

the aerial division and the general rental driver are now also commonly supervised by the facility's Assistant Branch Manager. There was also testimony that on approximately January 1 the Branch Manager at a meeting told all employees employed at the facility that the aerial division and the general rental equipment division had merged. However, the evidence also shows that some facets of these divisions continue to be operated separately. The aerial division employees' benefits and other conditions of employment have remained unchanged. Thus, the record fails to reflect how the change in supervision has substantially impacted the aerial division employees' work life.

In respect to changes in employees' duties, the record indicates that little change has occurred in the duties of the mechanics. The aerial mechanic continues to perform maintenance and repair work primarily on aerial equipment, while the general rental mechanics perform similar functions involving equipment rented from that division. Since the aerial mechanic does not work on Saturday and the mechanics of the general rental division alternate Saturday work, if a piece of aerial equipment requires repair on a Saturday, it is performed by a general equipment mechanic. The record indicates, however, that this practice has occurred for an indefinite period of time prior to the January merger. The change in duties which has occurred since January has primarily affected the two truck drivers. Previously, the aerial driver transported predominantly equipment leased from his division and the same was true for the general rental driver. Since January 1, however, the drivers are assigned pickups and deliveries based upon business needs, without regard to the type of equipment being transported. Some interchange of driver work also occurred occasionally before January 1, however. Only three individuals testified at the hearing herein, and none possessed direct knowledge of the extent of the change in drivers' duties. No driver testified. Thus, the record does not contain a comparison between the extent of the interchange of driver duties before versus after January 1 with any degree of precision. The testimony concerning driver duties was provided by a general rental mechanic who is not in a position to gauge the extent of the change in duties performed by the drivers. Therefore, the evidence is insufficient to conclude that the change is substantial, and that it requires the inclusion of the aerial driver into the existing unit.

The Board follows a restrictive policy concerning accretions because accreted employees are not accorded an opportunity to determine their own bargaining representative through a Board-conducted election, Compact Video Services, 284 NLRB 117, 119 (1987). In the case at hand, it is concluded that record evidence is simply insufficient to establish that the changes that have occurred in the work lives of the aerial division employees since January 1, are sufficiently substantial to support the conclusion that they now share such a community of interest with general equipment employees to require their addition to that unit. Accordingly, the employees of the aerial division shall not be accreted to the existing unit.

V. ORDER

Based upon the foregoing analysis, it is concluded that the aerial division employees at the Employer's Lafayette facility do not constitute an accretion to the bargaining unit represented by the Union. Accordingly, the petition in Case 25-UC-231 is dismissed.

VI. DIRECTION OF ELECTION

The petition in Case 25-UD-248 seeks an election in the above-described unit, in order to ascertain the desire of unit members regarding whether to rescind the union-security provision of the parties' current collective bargaining agreement. The undersigned having determined that employees of the Employer's aerial division are not an accretion to the unit, only employees within the unit currently represented by the Union shall be eligible to vote in this election. An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate, at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to withdraw the authority of the International Union of Operating Engineers Local 103, AFL-CIO, to require, under its agreement with their employer, that employees make certain lawful payments to the union in order to retain their jobs.

VII. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices, Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VIII. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them, Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision, North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, **on or before May 26, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

IX. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by June 2, 2005.

SIGNED at Indianapolis, Indiana, this 19th day of May, 2005.

s/s Rik Lineback

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